

AMENDED IN SENATE SEPTEMBER 12, 2013

AMENDED IN SENATE SEPTEMBER 6, 2013

AMENDED IN ASSEMBLY MAY 24, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 440

**Introduced by Assembly Member Gatto
(Principal coauthor: Assembly Member Mullin)**

February 15, 2013

An act to add Chapter 6.10 (commencing with Section 25403) to Division 20 of the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 440, as amended, Gatto. Hazardous materials: releases: local agency cleanup.

Existing law dissolved redevelopment agencies and community development agencies, as of February 1, 2012, and provides for the designation of successor agencies, as defined. Existing law requires successor agencies to wind down the affairs of the dissolved redevelopment agencies and to, among other things, perform obligations required pursuant to any enforceable obligation, including, but not limited to, any obligations under the Polanco Redevelopment Act to remedy or remove the release of hazardous substances within a project area consistent with state and federal laws, as specified.

Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, imposes liability for hazardous substance removal or remedial actions and requires the Department of Toxic Substances Control to adopt, by regulation, criteria for the selection and for the

priority ranking of hazardous substance release sites for removal or remedial action under the act.

This bill would authorize a local agency to take any action similar to that under the Polanco Redevelopment Act that the local agency determines is necessary, consistent with other state and federal laws, to investigate and clean up a release of hazardous materials in a blighted area, as determined by the local agency, within the boundaries of the local agency, pursuant to the procedures specified in the bill.

~~The bill would require the Department of Toxic Substances Control and the California regional water quality control board to adopt and post cleanup guidelines for the taking of a cleanup action. A~~ a local agency ~~would be required~~ to submit for approval a cleanup plan to the ~~California regional water control board or to the department~~ *Department of Toxic Substances Control* before taking action. The bill would require a local agency to take specified actions with regard to providing an opportunity for the public and other public agencies to participate in decisions regarding the proposed cleanup plan. The bill would allow the local agency to take those cleanup activities only under specified conditions with regard to the responsible party for the release, unless the local agency is taking action to investigate or conduct feasibility studies concerning a release or determines that conditions require immediate action.

The bill would allow the local agency to designate another agency, in lieu of the department or the regional board, to review and approve a cleanup plan and to oversee the cleanup of hazardous material from a hazardous material release site, under certain conditions. The bill would immunize a local agency that cleans up a hazardous material release, pursuant to those provisions, from liability under specified state laws, if the action is in accordance with a cleanup plan prepared by a qualified independent contractor, as defined, and approved by the department, a regional board, or the designated agency, and the cleanup is undertaken and properly completed. The bill would authorize the recovery by a local agency of cleanup costs from the responsible party.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Chapter 6.10 (commencing with Section 25403)
- 2 is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 6.10. HAZARDOUS MATERIAL RELEASE CLEANUP

25403. For purposes of this ~~article~~, *chapter*, the following terms shall have the following meanings:

(a) “Blighted area” means an area in which the local agency determines there are vacancies, abandonment of property, or a reduction or lack of proper utilization of property, and the presence or perceived presence of a release or releases of hazardous material contributes to the vacancies, abandonment *of property*, or reduction or lack of proper utilization of property.

(b) *“Blighted property” means property with the presence or perceived presence of a release or releases of hazardous material that contributes to the vacancies, abandonment of property, or reduction or lack of proper utilization of property.*

~~(b)~~
(c) “Clean up” or “cleanup” means an action taken to remove, as defined in Section 25323, remediate, as described in subdivision (a) or (b) of Section 25322, or otherwise abate the effects of a release of hazardous material.

~~(c)~~
(d) “Cleanup plan” means a document that details the actions to be taken to clean up a release of a hazardous material.

~~(d)~~
(e) “CUPA” means the Certified Unified Program Agency certified to implement the unified program pursuant to Chapter 6.11 (commencing with Section 25404).

~~(e)~~
(f) “Department” means the Department of Toxic Substances Control.

~~(f)~~
(g) “Designated agency” means an agency designated by the local agency pursuant to paragraph (1) or (2) of subdivision (e) of Section 25403.1.

~~(g)~~
(h) “Director” means the Director of Toxic Substances Control.

~~(h)~~
(i) “Hazardous material” has the same meaning as defined in subdivision (d) of Section 25260.

~~(i)~~

(j) “Investigation” means an action taken to determine the source, nature, and extent of a release of hazardous material with sufficient detail to provide a reasonable basis for decisions regarding the cleanup of the hazardous material. An investigation ~~may take place in one or more phases and may~~ *does not* include a Phase I or Phase II environmental site assessment.

~~(j)~~

(k) “Investigation plan” means a document that specifies actions to be taken to investigate a suspected release of hazardous material. An investigation plan ~~may provide for an investigation to take place in one or more phases;~~ *does not include a Phase I or Phase II environmental site assessment.*

~~(k)~~

(l) “Local agency” means ~~a~~ *both of the following:*

(1) A county, a city, or ~~a housing authority, as provided in Section 34240;~~ *city and county.*

(2) A “housing authority,” *as provided in Section 34240, if the housing authority is an entity assuming the housing functions of a former redevelopment agency pursuant to paragraph (2) of subdivision (a) of Section 34176 and the property subject to this chapter was transferred from that successor agency to the housing authority.*

~~(l)~~

(m) “Person” means an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, and corporation, including, but not limited to, a government corporation. “Person” also includes any local agency, county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law.

~~(m)~~

(n) “Phase I environmental assessment” ~~has the same meaning as defined in Section 25200.14, except with respect to a hazardous material;~~ *means a preliminary assessment of a property to determine whether there has been, or may have been, a release of hazardous material based on reasonable available information about the property and general vicinity. A Phase I environmental assessment shall meet the most current requirements adopted by the American Society for Testing and Materials (ASTM) for*

1 *Standard Practice for Environmental Site Assessment: Phase I*
2 *Environmental Site Assessment Process or meet the requirements*
3 *of Part 312 (commencing with Section 312.1) of Title 40 of the*
4 *Code of Federal Regulations.*

5 (o) “Phase II environmental assessment” means an intrusive
6 study where actual physical environmental samples are collected
7 and analyzed to characterize the type and distribution of hazardous
8 material in the environment. A phase II environmental assessment
9 shall meet the most current requirements adopted by the American
10 Society for Testing and Materials (ASTM) for Standard Practice
11 for Environmental Site Assessments: Phase II Environmental Site
12 Assessment Process.

13 ~~(n)~~
14 (p) “Qualified independent contractor” means an independent
15 contractor who is any of the following:

16 (1) An engineering geologist who is certified pursuant to Section
17 7842 of the Business and Professions Code.

18 (2) A geologist who is registered pursuant to Section 7850 of
19 the Business and Professions Code.

20 (3) A civil engineer who is registered pursuant to Section 6762
21 of the Business and Professions Code.

22 ~~(o)~~
23 (q) “Regional board” means a California regional water quality
24 control board.

25 ~~(p)~~
26 (r) “Release” means any spilling, leaking, pumping, pouring,
27 emitting, emptying, discharging, injecting, escaping, leaching,
28 dumping, or disposing into the ~~environment~~. *environment on*
29 *blighted property.*

30 ~~(q)~~
31 (s) “Responsible party” means a person described in subdivision
32 (a) of Section 25323.5 of this code or subdivision (a) of Section
33 13304 of the Water Code.

34 ~~(r)~~ “State
35 (t) “Site designation committee” means the committee
36 established pursuant to Section 25261.

37 (u) “State board” means the State Water Resources Control
38 Board.

39 25403.1. (a) (1) (A) A local agency may, in accordance with
40 this chapter, take any action that the local agency determines is

1 necessary and that is consistent with other state and federal laws
2 to investigate or clean up a release on, under, or from *blighted*
3 *property that the local agency has found to be within a blighted*
4 *area within a the local agency's boundaries and that the local*
5 *agency has found to be within a blighted area, due to the presence*
6 *of hazardous materials following a Phase I or Phase II*
7 *environmental assessment pursuant to subdivision (f), whether the*
8 *local agency owns that property or not. When taking action*
9 *pursuant to this chapter, if the local agency does not own property*
10 *that is the subject of the investigation and cleanup activities, the*
11 *local agency has the right to enter that property, if, upon providing*
12 *notice to the owner of that property in accordance with*
13 *subparagraph (A) of paragraph (2) of subdivision (b), the owner*
14 *of the property does not respond to the notice or the local agency*
15 *reasonably deems the response inadequate.*

16 (B) The local agency shall contact the department or the
17 appropriate regional board prior to issuing a notice pursuant to
18 paragraph (2) of subdivision (b) in connection with a property on
19 the National Priority List or a property or release subject to any
20 of the following:

- 21 (i) Chapter 6.5 (commencing with Section 25100).
22 (ii) A Cease and Desist Order issued under Section 13301 of
23 the Water Code.
24 (iii) A Cleanup and Abatement Order issued under Section
25 13304 of the Water Code.
26 (iv) An existing voluntary cleanup agreement between the
27 regional board or the department and a responsible party that
28 requires a cleanup by a specified date.
29 (v) *An order issued by a regional board pursuant to Section*
30 *13267 of the Water Code, or an agreement entered into by the*
31 *department pursuant to Section 25187, 25355.5, or 25358.3, for*
32 *the investigation or cleanup at a site.*
33 (vi) *A remedial action order, an imminent or substantial*
34 *endangerment order or agreement, a prospective purchase*
35 *agreement, or an order on consent issued pursuant to Section*
36 *25355.5, 25356.1.3, or 25358.3, as applicable.*
37 (vii) *An expedited remediation order issued pursuant to the*
38 *former Chapter 6.86 (commencing with Section 25396), as that*
39 *chapter read on January 1, 2012.*

1 (viii) *An agreement entered into pursuant to the California Land*
2 *Reuse and Revitalization Act (Chapter 6.82 (commencing with*
3 *Section 25395.60)), as specified in Section 25395.92.*

4 (ix) *An agreement for the environmental oversight of schools*
5 *entered into pursuant to Section 17213.1 of the Education Code*
6 *and in accordance with Sections 17201 and 17210.1 of the*
7 *Education Code.*

8 (C) (i) If the department or the regional board objects within
9 30 days to the local agency issuing the notice, the local agency
10 and the department or regional board shall promptly meet and
11 confer to resolve the department's or regional board's concerns.
12 If the local agency and the department or the regional board cannot
13 reach a mutually acceptable resolution, *resolution on sites identified*
14 *in clause (iv) of subparagraph (B) of paragraph (1),* the matter
15 shall be submitted to the site designation committee created
16 pursuant to Section 25261.

17 (ii) Notwithstanding subdivision (a) of Section 25261, the
18 ~~director and the chairperson of the state board~~ *designee of the*
19 *department or the regional board on the site designation committee*
20 shall not participate in the review of a dispute involving the
21 department or a regional board, respectively. The decision of the
22 site designation committee shall resolve the matter impartially, by
23 majority vote, and within 45 days of the date on which the
24 matter is presented. Either party to the dispute may present the
25 matter to the site designation committee, and each party shall be
26 given a reasonable opportunity to be heard.

27 ~~(2) (A) The department and regional board shall adopt and post~~
28 ~~on that agency's Internet Web site general cleanup guidelines with~~
29 ~~regard to taking action to clean up a release pursuant to this chapter.~~

30 ~~(B) Paragraph (A) does not prohibit the department or the~~
31 ~~regional board from approving site-specific cleanup guidelines;~~
32 ~~with regard to taking an action to clean up a release pursuant to~~
33 ~~this chapter, as appropriate.~~

34 ~~(3) The adoption and posting of general cleanup guidelines~~
35 ~~pursuant to this section shall not be deemed the adoption of a~~
36 ~~regulation for purposes of Chapter 3.5 (commencing with Section~~
37 ~~11340) of Part 1 of Division 3 of Title 2 of the Government Code~~
38 ~~and shall be exempt from those provisions.~~

39 (4)

1 (2) A local agency shall, before taking action to clean up the
2 release, do all of the following:

3 (A) If the investigation has not been completed or additional
4 investigation is necessary, have an investigation plan prepared by
5 an independent qualified contractor.

6 (B) Submit an investigation plan and cost recovery agreement
7 to the regional board or the department for ~~review~~; *review and*
8 *approval*.

9 (C) After completion of the investigation plan, have a cleanup
10 plan prepared, ~~pursuant to the regional board or the department~~
11 ~~guidelines~~, by an independent qualified contractor.

12 (D) Submit a cleanup plan and existing applicable documents
13 required pursuant to the California Environmental Quality Act
14 (Division 13 (commencing with Section 21000) of the Public
15 Resources Code) to the regional board or to the department for
16 approval.

17 (E) Comply with the public participation requirements specified
18 in Section 25403.7.

19 ~~(5) If the~~

20 (3) ~~The regional board or the department has comments on the~~
21 ~~investigation plan, the regional board or the director shall provide~~
22 ~~the comments to the local agency act on the investigation plan~~
23 *within 30 days of receipt of the investigation plan.*

24 ~~(6)~~

25 (4) The regional board or the department shall respond to the
26 local agency's request for approval of a cleanup plan within 60
27 days of the receipt of the plan.

28 ~~(7)~~

29 (5) Within 60 days after approval of the cleanup plan, pursuant
30 to applicable statutes and regulations, the director or the regional
31 board, as appropriate, shall acknowledge, in writing, that upon
32 proper completion of the cleanup in accordance with the cleanup
33 plan, the immunity provided by Section 25403.2 shall apply.

34 ~~(8)~~

35 (6) The local agency shall notify the department and local health
36 and building departments and the regional board of any cleanup
37 activity pursuant to this section at least 30 days before the
38 commencement of the activity.

39 ~~(9)~~

1 (7) If an action taken by a local agency or a responsible party
2 to clean up a release of a hazardous material does not meet, or is
3 not consistent with, a cleanup plan approved by the regional board
4 or the department, the department or the regional board that
5 approved the cleanup plan may require the responsible party or
6 local agency to take, or cause the taking of, additional action to
7 clean up the release, as provided by applicable law.

8 ~~(10)~~

9 (8) If an administering agency for the site has been designated
10 pursuant to Section 25262, the department or the regional board
11 may impose any requirements for additional action pursuant to
12 paragraph~~(9)~~ (7) only as provided in Sections 26263 and 25265.

13 ~~(11)~~

14 (9) If methane or landfill gas is present, the local agency shall
15 obtain written approval from the Department of Resources
16 Recycling and Recovery prior to taking action authorized under
17 this subdivision.

18 (b) Except as provided in subdivision (c), a local agency may
19 take the actions specified in subdivision (a) only under one of the
20 following conditions:

21 (1) There is no responsible party for the release identified by
22 the local agency.

23 (2) Both of the following apply:

24 (A) A party determined by the local agency to be a responsible
25 party for the release has been notified by the local agency, or has
26 received adequate notice from the department, a regional board,
27 the California Environmental Protection Agency, or other
28 governmental agency with relevant authority, and has been given
29 60 days to respond and to propose an investigation plan and
30 schedule if in the opinion of the responsible party's qualified
31 independent contractor there is not enough site-specific data to
32 prepare a cleanup plan, and 60 days to propose a cleanup plan and
33 schedule following completion of the investigation plan in
34 accordance with the investigation plan schedule approved by the
35 local agency.

36 (B) The responsible party specified in subparagraph (A) has not
37 agreed within an additional 60 days to implement an investigation
38 plan and schedule to investigate or clean up the release that meets
39 both of the following requirements:

1 (i) The investigation plan and schedule and the cleanup plan
2 and schedule are acceptable to the local agency.

3 (ii) The local agency makes a finding that the investigation plan
4 and schedule and the cleanup plan and schedule are consistent with
5 the intended development schedule and use of the property.

6 (3) (A) The party determined by the local agency to be the
7 responsible party for the hazardous material release entered into
8 an agreement with the local agency to prepare an investigation
9 plan or cleanup plan for approval by the department, the regional
10 board, or the appropriate local agency, and to implement the
11 investigation plan or cleanup plan in accordance with an agreed
12 schedule, but failed to do any of the following:

13 (i) Prepare the investigation plan or cleanup plan.

14 (ii) Implement the investigation plan or cleanup plan in
15 accordance with the agreed schedule.

16 (iii) Otherwise failed to carry out the investigation in an
17 appropriate and timely manner.

18 (B) An action taken by the local agency pursuant to this
19 paragraph shall be consistent with any agreement between the local
20 agency and the responsible party and with the requirements of the
21 state agency or the designated agency that approved or will approve
22 the cleanup plan and is overseeing or will oversee the preparation
23 and implementation of the cleanup plan.

24 (c) The responsible party specified in subparagraph (A) of
25 paragraph (2) of subdivision (b) may appeal a 60-day notice issued
26 pursuant to this section to the local agency's governing body by
27 filing a written request to appeal the notice with the clerk of the
28 local agency within ~~10~~ 30 days of receipt of the notice. Filing an
29 appeal to the local agency's governing body tolls the 60-day notice
30 period until the appeal is heard and decided by the local agency's
31 governing body. Any challenge to the decision reached by the local
32 agency's governing body shall be presented only as part of a cost
33 recovery or injunctive proceeding initiated by the local agency
34 under Section 25403.5. The local agency's decision shall be upheld
35 if supported by substantial evidence presented in the action
36 commenced under Section 25403.5, and shall not be invalidated
37 on the grounds that the local agency failed to include all responsible
38 parties in a 60-day notice issued pursuant to this section. A claim
39 of failure to include all responsible parties in a 60-day notice issued

1 pursuant to this section shall not be a defense to the liability
2 provided for in Section 25403.5.

3 (d) Subdivision (b) does not apply to either of the following:

4 (1) A local agency taking actions to ~~investigate or conduct~~
5 ~~feasibility studies concerning a release.~~ *a Phase I or Phase II*
6 *environmental assessment in accordance with standard real estate*
7 *practices.*

8 (2) A local agency taking the actions specified in subdivision
9 (a) if the local agency determines that conditions require immediate
10 ~~action.~~ *action due to an imminent threat to human health or the*
11 *environment.*

12 (e) (1) A local agency may designate another agency, in lieu
13 of the department or the regional board, to review and approve a
14 cleanup plan and to oversee the cleanup of hazardous materials
15 from a specific hazardous material release site if the agency is
16 designated as the administering agency under Section 25262. In
17 that event, the designated agency shall conduct the oversight of
18 the cleanup in accordance with Chapter 6.65 (commencing with
19 Section 25260), and all provisions of that chapter shall apply to
20 the cleanup.

21 (2) A local agency may designate another agency to review and
22 approve a cleanup plan for a site and oversee the cleanup at the
23 site if all of the following conditions exist:

24 (A) The designated agency is certified as a CUPA.

25 (B) The site is an underground storage tank site subject to
26 Chapter 6.7 (commencing with Section 25280).

27 (C) The designated agency is certified pursuant to Section
28 25297.01 and the state board has entered into an agreement with
29 the designated agency pursuant to Section 25297.1.

30 (D) The designated agency determines that the site is within the
31 guidelines and protocols established in, and pursuant to, the
32 agreement specified in subparagraph (C).

33 (E) The designated agency consents to the designation.

34 (3) Within 60 days after approving a cleanup plan pursuant to
35 paragraph (1) or (2), the designated agency shall issue a notice
36 that, upon proper completion of the cleanup plan, the immunity
37 specified in Section 25403.2 shall apply. If the designated agency
38 was formed by the local agency, the cleanup plan shall also be
39 subject to the approval of the department or regional board.

1 (4) (A) An agency may not consent to the designation pursuant
2 to paragraph (1) or (2) unless the designated agency determines
3 that it has adequate staff resources and the requisite technical
4 expertise and capabilities available to adequately supervise the
5 cleanup.

6 (B) If an agency has been designated pursuant to paragraph (2),
7 the department or a regional board may require the designated
8 agency to withdraw from the designation or stop taking action
9 pursuant to that designation, after providing the designated agency
10 with adequate notice, if both of the following conditions are met:

11 (i) The department or a regional board determines that the
12 agency's designation was not consistent with paragraph (2), or
13 makes one of the findings specified in subdivision (d) of Section
14 101480.

15 (ii) The department or a regional board determines that it has
16 adequate staff resources and capabilities available to adequately
17 supervise the cleanup, and assumes that responsibility.

18 (C) This paragraph does not prevent a regional board from taking
19 an action pursuant to Division 7 (commencing with Section 13000)
20 of the Water Code.

21 (5) If an agency has been designated pursuant to paragraph (1)
22 or (2), the designated agency may, after providing the local agency
23 with adequate notice, withdraw from its designation or stop taking
24 action pursuant to that designation after making one of the findings
25 specified in subdivision (d) of Section 101480.

26 (f) (1) To facilitate remedial planning, the local agency may
27 require the owner or operator of a site within the local agency's
28 jurisdictional boundaries to provide the local agency with all
29 existing environmental information pertaining to the site, including
30 the results of any phase I or subsequent environmental assessment,
31 any assessment conducted pursuant to an order from, or agreement
32 with, any federal, state, or local agency, and any other
33 environmental assessment information, except that which is
34 determined to be privileged.

35 (2) A person requested to furnish the information pursuant to
36 paragraph (1) shall be required only to furnish that information
37 that may be within that person's possession or control, including
38 actual knowledge of information within the possession or control
39 of any other party. If environmental assessment information is not
40 available, the local agency may require the owner of the property

1 to conduct, and to pay the expenses of conducting, an assessment
2 in accordance with standard real estate practices for conducting
3 phase I or phase II environmental assessments. If the local agency
4 conducts the phase I or phase II environmental assessment because
5 the owner or operator failed to provide this information, the local
6 agency shall have a right of entry, upon reasonable notice, to enter
7 the property and conduct the phase I or phase II environmental
8 assessment. The local agency may recover the costs of the phase
9 I or phase II environmental assessment in accordance with Section
10 25403.5.

11 25403.2. (a) (1) Notwithstanding any other law, except as
12 otherwise provided in this chapter, a local agency that undertakes
13 and completes an action, or causes another person to undertake
14 and complete an action pursuant to Section 25403.1 for which a
15 finding of completion is made pursuant to subdivision (b), to clean
16 up a hazardous material release on, under, or from property within
17 the local agency's boundaries, in accordance with a cleanup plan
18 prepared by a qualified independent contractor and approved by
19 the department, a regional board, or the designated agency, in
20 accordance with Section 25403.1, is not liable, with respect to that
21 release only, pursuant to any of the following:

22 (A) Division 7 (commencing with Section 13000) of the Water
23 Code.

24 (B) Chapter 6.5 (commencing with Section 25100), Chapter 6.7
25 (commencing with Section 25280), Chapter 6.75 (commencing
26 with Section 25299.10), or Chapter 6.8 (commencing with Section
27 25300), of Division 20.

28 (C) Any other state or local law imposing liability for cleanup
29 of releases of hazardous materials.

30 (2) If the cleanup was also performed pursuant to Chapter 6.65
31 (commencing with Section 25260) of Division 20, and a certificate
32 of completion is issued pursuant to subdivision (b) of Section
33 25264, the immunity from local agency action provided by the
34 certificate of completion, as specified in subdivision (c) of Section
35 25264, shall apply to the local agency, in addition to the immunity
36 conferred by this section.

37 (3) In the case of a cleanup performed pursuant to Chapter 6.65
38 (commencing with Section 25260) of Division 20, and for which
39 the administering agency is a local agency, the limitations on the
40 certificate of completion set forth in paragraphs (1) to (6), inclusive,

1 of subdivision (c) of Section 25264 are limits on any immunity
2 provided for by this section and subdivision (c) of Section 25264.

3 (b) Notwithstanding any provision of law or policy providing
4 for certification by a person conducting a cleanup that the action
5 has been properly completed, a determination that a cleanup has
6 been properly completed pursuant to this section shall be made
7 only upon the affirmative approval of the director, the regional
8 board, or the designated agency, as appropriate. The department
9 or regional board, as appropriate, shall, within 60 days of the date
10 it finds that a cleanup has been completed, notify the local agency
11 in writing that the immunity provided by this section is in effect.
12 If another agency is designated to oversee the cleanup pursuant to
13 paragraph (1) or (2) of subdivision (d) of Section 25403.1, the
14 designated agency shall issue a notice within 60 days of the date
15 it finds that a cleanup has been completed.

16 (c) Upon proper completion of a cleanup, as specified in
17 subdivision (b), the immunity from action provided by the
18 certificate of completion provided pursuant to subdivision (c) of
19 Section 25264 and the immunity provided by this section extends
20 to all of the following, but only for the release or releases
21 specifically identified in the approved cleanup plan and not for
22 any subsequent release or any release not specifically identified
23 in the approved cleanup plan:

24 (1) An employee or agent of the local agency, including an
25 instrumentality of the local agency authorized to exercise some,
26 or all, of the powers of a local agency within, or for the benefit of,
27 a local agency and an employee or agent of the instrumentality.

28 (2) A person that enters into an agreement with a local agency
29 for the development of property, if the agreement requires the
30 person to acquire property affected by a hazardous material release
31 or to clean up a hazardous material release with respect to that
32 property.

33 (3) A person that acquires the property after a person has entered
34 into an agreement with a local agency for development of the
35 property, as described in paragraph (2).

36 (4) A person that provides financing to a person specified in
37 paragraph (2) or (3).

38 (d) Notwithstanding any other law, the immunity provided by
39 this section does not extend to any of the following:

1 (1) A person that was a responsible party for the release before
2 entering into an agreement, acquiring property, or providing
3 financing, as specified in subdivision (c).

4 (2) A person specified in subdivision (a) or (c) for any
5 subsequent release of a hazardous material or any release of a
6 hazardous material not specifically identified in the approved
7 cleanup plan.

8 (3) A contractor who prepares the cleanup plan or conducts the
9 cleanup.

10 (4) A person that obtains an approval of a cleanup plan pursuant
11 to Section 25403.1, or pursuant to a finding, as specified in
12 subdivision (b), by fraud, negligent or intentional nondisclosure,
13 or misrepresentation, and a person that knows before the approval
14 or determination is obtained or before the person enters into an
15 agreement, acquires the property, or provides financing, as
16 specified in subdivision (c), that the approval or determination was
17 obtained by these means.

18 (e) The immunity provided by this section is in addition to any
19 other immunity provided by law to a local agency.

20 (f) This section does not impair any cause of action by a local
21 agency or any other party against the person responsible for the
22 hazardous material release that is the subject of the cleanup taken
23 by the local agency or other person immune from liability pursuant
24 to this section.

25 (g) This section does not apply to, or limit, alter, or restrict, an
26 action for personal injury or wrongful death.

27 (h) This section does not limit liability of a person described in
28 paragraph (3) or (4) of subdivision (d) for damages under the
29 federal Comprehensive Environmental Response, Compensation,
30 and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et
31 seq.).

32 (i) This section does not establish, limit, or affect the liability
33 of a local agency for a release of a hazardous material that is not
34 investigated or cleaned up pursuant to this section or Chapter 6.65
35 (commencing with Section 25260).

36 25403.3. The immunity provided for by Section 25403.2 is
37 only conferred if both of the following apply:

38 (a) The action is in accordance with a cleanup plan prepared by
39 a qualified independent contractor and approved by the department,

1 a regional board, or the designated agency, as appropriate, pursuant
2 to Section 25403.1.

3 (b) The cleanup is found to have been undertaken and properly
4 completed, as specified in subdivision (b) of Section 25403.2.

5 25403.4. Within 60 days of being presented with appropriate
6 ~~documentation~~, *a bill from the department or regional board*, the
7 local agency shall reimburse the department or the regional board
8 for costs incurred in reviewing or approving investigation plans
9 and cleanup plans pursuant to this chapter. The department or
10 regional board may develop a payment ~~plan~~ *plan, consistent with*
11 *Section 25269*, with the local agency to repay costs over a longer
12 period of time. In the event of any dispute over the costs, the local
13 agency shall pay any undisputed costs and meet and confer with
14 the department or regional board to resolve the disputed items. In
15 connection with any disputes not resolved through meet and confer
16 efforts, the local agency may utilize any review processes
17 maintained by the department or the regional board.

18 25403.5. (a) Except as otherwise provided in this chapter, if
19 a local agency undertakes action to investigate property or clean
20 up, or to require others to investigate or clean up, including
21 compelling a responsible party through a civil injunctive action,
22 a release of hazardous material, the responsible party shall be liable
23 to the local agency for the costs incurred in the action. A local
24 agency may not recover the costs of goods and services that were
25 not procured in accordance with procurement procedures, where
26 applicable. The amount of the costs shall include the interest on
27 the costs accrued from the date of expenditure and reasonable
28 attorney's fees and shall be recoverable in a civil action. Interest
29 shall be calculated based on the average annual rate of return on
30 a local agency's investment of surplus funds for the fiscal year in
31 which costs were incurred.

32 (b) The only defenses available to a responsible party shall be
33 the defenses specified in subdivision (b) of Section 25323.5.

34 (c) A local agency may recover any costs incurred to develop
35 and to implement a cleanup plan approved pursuant to this chapter,
36 to the same extent the department is authorized to recover those
37 costs. The scope and standard of liability for cost recovery pursuant
38 to this section shall be the scope and standard of liability under
39 the federal Comprehensive Environmental Response,
40 Compensation, and Liability Act of 1980, as amended (42 U.S.C.

1 Sec. 9601 et seq.) as that act would apply to the department.
2 However, any reference to hazardous substance in that act shall
3 be deemed to refer to hazardous material as defined in Section
4 25403. It is the intent of the Legislature that local agencies
5 diligently pursue reimbursement for investigation and cleanup
6 costs incurred pursuant to this chapter, but each local agency is
7 authorized to assess whether and to what extent cost recovery is
8 practicable.

9 (d) An action for recovery of the costs of a cleanup undertaken
10 by a local agency under this section shall be commenced within
11 three years after completion of the cleanup.

12 (e) The action to recover costs provided by this section is in
13 addition to, and is not to be construed as restricting, any other
14 cause of action available to a local agency.

15 25403.6. (a) Except as provided in Section 25403.4,
16 notwithstanding any other state law or policy, a local agency that
17 undertakes and completes a cleanup, or otherwise causes a cleanup
18 to be undertaken and completed pursuant to this chapter shall not
19 be liable based on its ownership of property after a release
20 occurred, for any costs that any responsible party for that release
21 incurs to investigate or clean up the release or to compensate others
22 for the effects of that release.

23 (b) Except as provided in Section 25403. 2, this article does not
24 limit the powers of the state board or a regional board to enforce
25 Division 7 (commencing with Section 13000) of the Water Code.

26 25403.7. A local agency shall comply with all the following
27 requirements with regard to providing public participation when
28 taking action pursuant to this chapter:

29 (a) The local agency shall provide an opportunity, when
30 preparing the cleanup plan, for the public and for other public
31 agencies to participate in decisions regarding the cleanup plan,
32 taking into consideration the nature of the community interest.

33 (b) Thirty days before submitting the cleanup plan for approval,
34 the local agency shall take all of the following actions:

35 (1) Notify all other appropriate public agencies, including, but
36 not limited to, the department or the regional board, if not required
37 to approve the plan, regarding the proposed cleanup plan.

38 (2) Place a notice in a newspaper of general circulation in the
39 area of the property, including, but not limited to, a
40 community-based newspaper, as appropriate.

1 (3) Post notice of the proposed cleanup plan on the property.

2 (c) All of the following methods for public participation shall
3 be used to notify the public of the proposed cleanup plan:

4 (1) Thirty days' prior public notice in a factsheet format of the
5 proposed cleanup plan, in English and in any other language
6 commonly spoken in the area of the property.

7 (2) Access, at both the local agency and at local repositories, to
8 the proposed cleanup plan, property assessment, addenda, and any
9 other supporting documentation, including materials listed as
10 references in the cleanup plan and property assessment.

11 (3) Procedures for providing a reasonable opportunity to
12 comment on the plan and related documents specified in paragraph
13 (2).

14 (d) If a public meeting is requested, the local agency shall hold
15 a public meeting in the area of the property to receive comments.

16 (e) The local agency shall consider any comments received
17 before submitting the proposed cleanup plan for approval.

18 (f) The local agency may also provide for, but is not limited to,
19 the use of other methods for public participation, including public
20 notices, direct notification of interested parties, distribution of
21 electronic copies of the cleanup plan, property assessment addenda,
22 and other supporting documentation, including materials listed as
23 references in the cleanup plan and property assessment, electronic
24 comment forms, and forming advisory groups, as appropriate, to
25 disseminate information and assist the local agency in gathering
26 public input, holding additional public meetings or public hearings,
27 and providing an opportunity to comment on the proposed cleanup
28 plan prior to approval.

29 (g) The local agency, as part of its communications with affected
30 communities, shall provide information regarding the process by
31 which decisions about the property are made and the recourse that
32 is available for those who may disagree with an agency decision.

33 (h) The local agency shall consider the issue of environmental
34 justice, as defined in subdivision (e) of Section 65040.12 of the
35 Government Code, for communities most impacted, including
36 low-income and racial minority populations, before submitting the
37 cleanup plan for approval.

38 (i) To the extent possible, the local agency shall coordinate its
39 public participation activities with those undertaken by other

1 jurisdictions and agencies associated with the property, to avoid
2 duplication.

3 (j) It is the intent of the Legislature that the public participation
4 process established pursuant to this section ensures full and robust
5 participation of a community affected by this chapter.

6 25403.8. The Legislature finds and declares that this chapter
7 is the policy successor to the Polanco Redevelopment Act (Article
8 12.5 (commencing with Section 33459) of Part 1 of Chapter 4 of
9 Division 24) and shall be interpreted and implemented consistent
10 with that act. It is further the intent of the Legislature that any
11 judicial construction or interpretation of the Polanco
12 Redevelopment Act also apply to this chapter.